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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648--XG261

U.S. Purse Seine Fishery in the Western and Central Pacific Ocean; Notice of Intent to Prepare an Environmental Impact Statement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; intent to prepare an environmental impact statement; announcement of public scoping period; request for comments.

SUMMARY: NMFS is gathering information necessary to prepare an Environmental Impact Statement (EIS) for future management actions for the U.S. purse seine fishery in the western and central Pacific Ocean (WCPO). This notice of intent to prepare an EIS represents the beginning of the public scoping process and invites interested parties to provide comments on alternatives to be considered in an EIS and to identify potential issues, concerns, and any reasonable additional alternatives that should be considered.

DATES: To ensure consideration during the development of this EIS, written comments on the scope and alternatives to be considered in the EIS must be submitted no later than *[insert date 45 days after date of publication in the FEDERAL REGISTER]*.

Public comments will also be accepted during two webinars scheduled for 9:30-11:30 a.m. September 11, 2018 and 11:30 a.m.-1:30 p.m., September 14, 2018. Both webinars are scheduled in Hawai'i Standard Time (HST; UTC -10:00). Please notify David O'Brien (see **FOR FURTHER INFORMATION CONTACT**, below) by August 31, 2018, if you plan to attend

either or both webinars. Instructions for connecting or calling in to the webinars will be emailed to meeting participants. Accommodations for persons with disabilities are available; accommodation requests should be directed to David O'Brien at least 10 working days prior to the webinar.

ADDRESSES: You may submit comments on the scope of this EIS by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2018-0062*,
2. Click the "Comment Now!" icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of this document can be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above) and are available at www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0062.

FOR FURTHER INFORMATION CONTACT: David O'Brien, NMFS PIRO, at David.S.O'Brien@noaa.gov, or at (808)725-5038.

SUPPLEMENTARY INFORMATION:

Background

Purse seine vessels flagged to the United States fish for skipjack tuna (*Katsuwonus pelamis*) and other tunas in the WCPO. The fishery developed in the 1970s and early 1980s as some U.S. tuna vessels moved west from fishing grounds in the eastern Pacific. The vessels participating in this fishery currently are large: between 175 and 260 feet in length with crews of between 19 and 40. Purse seining is fishing by setting a vertically oriented net around a school of fish, and then closing, or “pursing”, the bottom of the net to capture the fish. The vessels use purse seine nets up to about 6,500 feet long and 600 feet deep and in recent years (2013-2017) vessels set their nets, on average, once per fishing day.

NMFS manages the fishery in accordance with U.S. laws implementing international agreements, including the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America¹, also known as the South Pacific Tuna Treaty (hereafter, Treaty), and conservation and management measures adopted by the Western and Central Pacific Fisheries Commission (hereafter, Commission or WCPFC). The fishery operates in the exclusive economic zones (EEZs) of the Pacific Island parties to the

¹ Parties to the Treaty include: Australia, Cook Islands, Federated States of Micronesia, Republic of Fiji, Republic of Kiribati, Republic of Marshall Islands, Republic of Nauru, New Zealand, Niue, Republic of Palau, Independent State of Papua New Guinea, Independent State of Samoa, Solomon Islands, Kingdom of Tonga, Tuvalu, Republic of Vanuatu and the United States of America.

Treaty (hereafter, PIPs) and that of the United States, as well as on the high seas in the WCPO. This EIS will address all U.S. tuna purse seine fisheries within the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean; a map of which is available at the WCPFC website at: www.wcpfc.int/doc/convention-area-map.

The U.S. purse seine fleet is not the only fishing fleet active in this region. Other major flags of purse seine fishing vessels in the region include: Japan, Kiribati, Korea, Papua New Guinea, and Taiwan. The U.S. fleet's fishing activities accounted for approximately 14 percent of the total purse seine fishing effort—measured in fishing days—in the WCPO from 2010 through 2016.²

The regulations under which the U.S. fleet operates require changes in response to new decisions of the Commission and new provisions of the Treaty, as well as changes in other laws. The Commission typically adopts new conservation and management measures relevant to this fishery annually. The PIPs and the United States agreed to amendments to the Treaty and its Annexes in 2016, along with a Memorandum of Understanding regarding their intent to provisionally apply some of the amendments pending completion of ratification and entry into force. Some provisions of the Treaty Annexes extend only through 2020 or 2022. NMFS promulgates regulations to implement the Commission's decisions (50 CFR part 300, subpart O) under authority of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*) and provisions of the Treaty (50 CFR part 300, subpart D) under authority of the South Pacific Tuna Act (16 U.S.C. 973—973r). In addition, NMFS may regulate the

² Pacific Community – Oceanic Fisheries Programme. 2017. WCPFC14 Information Papers 05 –Revision 1 (20 Nov 2017) Catch and Effort Tables on Tropical Tuna CMMs. Available at: www.wcpfc.int/node/30076

fishery to meet the requirements of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and other applicable laws.

Regulations may control fishing effort and/or catches, specify open and closed areas and/or the use and design of fishing gear, among others. Recent regulatory changes have focused on Commission decisions limiting total fishing effort and the number of sets associated with fish aggregating devices (FADs). The objectives of these decisions include reducing fishing mortality on bigeye tuna (*Thunnus obesus*), which are caught primarily when fishing on FADs, and controlling fishing mortality on yellowfin tuna (*Thunnus albacares*) and skipjack tuna.

The proposed action in this EIS is the continued authorization of the U.S. purse seine fishery in the WCPO. Analysis of this proposed action under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321, *et seq.*) involves examining likely future management of the fishery. Since management measures (including Commission decisions, Treaty provisions, and other applicable laws) can change substantially each year, a wide range of alternative regulatory approaches would be appropriate as action alternatives for consideration in this EIS.

Purpose and Need for the Proposed Action

The purpose of and need for the proposed action is the continued authorization of the U.S. purse seine fishery in the WCPO under existing and reasonably foreseeable future management measures.

Alternatives for Consideration

Both no-action and action alternatives have been drafted for consideration during the public scoping period. NMFS has not yet identified a preferred alternative or preferred alternatives. Briefly, these alternatives are:

No-action Alternatives

No-action alternatives are used in NEPA documents to establish the baseline against which the environmental impacts of the action alternatives are assessed, and they are often thought of as either maintaining the status quo—or current management—or not proceeding with the proposed action. There would still be environmental consequences of not proceeding with the proposed action, and defining no-action alternatives allows for the explicit evaluation of these impacts on their own and in relation to action alternatives. NMFS is considering analyzing two separate no-action alternatives in this EIS: a no-action alternative under which there would be no U.S. purse seine fishery in the WCPO (a no-fishery alternative), as well as a no-action alternative under which fishing operations and management would continue as they have in recent years (the status quo alternative).

Specifics of these two draft no-action alternatives are:

- No-action alternative A: No fishery. No U.S. purse seine fishing in any portion of the WCPO, which includes the EEZs of the United States and other countries, as well as the high seas.
- No-action alternative B: Status quo. A fishery with regulatory conditions and fishing activity distributed across the EEZs of the United States and other countries and the high seas in proportions similar to that seen in recent years (2014-2017). Specifically, a fishery with approximately 7,000 fishing days of effort, 7,000 total net sets and 2,800 FAD sets (40 percent FAD sets).

Action Alternatives

Action alternatives are generally the management options proposed or considered when the NEPA process begins. The action alternatives are meant to describe potential alternative

approaches to achieve the defined purpose and need of the proposed action. NMFS recommends analyzing two specific classes of action alternatives in the EIS:

1. Alternatives that control the type and amount of fishing, such as limits on fishing effort, catches, and fishing methods; and
2. Alternatives that control the allocation and use of fishing privileges amongst participants in the fishery.

We address these two classes of draft action alternatives separately here and describe how they would be addressed concurrently in the EIS.

Alternatives that Control the Type and Amount of Fishing

The controls on type and amount of fishing will be the primary drivers of environmental consequences of the fishery. The NMFS approach to developing action alternatives has been to review recent regulations, Treaty terms, and Commission decisions to understand the potential range of future management actions. There has been significant variability in management approaches in recent years, and both more and less restrictive regulatory changes have occurred.

Recent controls on the type and amount of fishing have focused on limits on fishing effort generally and restrictions on the use of FADs (*i.e.*, limits on a subset of fishing effort). For both fishing effort and FAD use, NMFS has drafted alternatives that cover a wide range of possible future management outcomes (Table 1). NMFS is suggesting this approach to extend the usefulness of the analysis in this EIS, as the environmental impacts of future management measures that are not specifically analyzed can be quickly estimated relative to those that are.

Fishing Effort Regulations

The annual fishing effort possible by the U.S. WCPO purse seine fleet is currently limited by the Treaty, which limits the number of license applications that may be forwarded to the

Treaty Administrator to 40. Given the recent average of one net set per fishing day per vessel and imagining 40 vessels actively fishing about 80 percent of the time, a theoretical maximum annual effort level is approximately 12,000 fishing days (or 12,000 sets). Over the last 15 years, the highest annual fishing effort recorded by the fleet was 8,664 fishing days (2014). The maximum number of U.S. purse seine vessels fishing in any of the last 15 years has been 40 (2013 and 2014), but it has been as low as 15 vessels (2005) and is currently 33 (2018). For the purposes of evaluating potential future management actions in this EIS, U.S. purse seine effort levels up to 12,000 fishing days annually are plausible. Along with the two no-action alternatives, representing 0 and 7,000 fishing days of effort, respectively, NMFS is considering analyzing three action alternatives with respect to limits on fishing effort: 5,000, 9,000, and 12,000 fishing days (Table 1).

The annual fishing effort associated with the action alternatives would be distributed across the U.S. EEZ, the high seas, and the EEZs of the PIPs. Since 2009, fishing effort in the U.S. EEZ and on the high seas in the WCPFC Convention Area has been limited in accordance with Commission decisions. The limits on the number of days of effort have, in the past, applied to the combined high seas and the U.S. EEZ (referred to in U.S. fisheries regulations as the Effort Limit Area for Purse Seine, or ELAPS). The combined U.S. EEZ and high seas limits dropped from 2,588 fishing days per year in 2009-2013 to 1,828 fishing days per year in 2014–2017. Future effort limits could apply to the U.S. EEZ and high seas areas separately. NMFS has recently implemented a limit of 458 fishing days in the U.S. EEZ—with the potential to increase to 558 fishing days if certain conditions are met—and 1,370 fishing days on the high seas for 2018 (see final rule implementing recent decisions of the WCPFC at 83 FR 33851, published July 18, 2018; hereafter “2018 Final Rule”).

The number of fishing days available to the U.S. purse seine fleet in the EEZs of the PIPs is higher than the number of fishing days available in the U.S. EEZ or on the high seas. The Treaty specifies a set number of “upfront” days that are available each year for the U.S. fleet to fish in the EEZs of PIPs. The Treaty Annexes stipulate the maximum number of upfront days that are available to the U.S. fleet and the price per day. The Treaty also identifies that “additional” days can be purchased by the owners of U.S. vessels directly from individual PIPs. Any conditions put by the PIPs on the use of these additional days must be consistent with the Treaty terms, but no other specifications—such as price—are defined in the Treaty. Provisions allowing for additional fishing day purchases were adopted as part of the 2016 amendments to the Treaty, and 2017 was the first year that the option of purchasing additional days was available under the amended Treaty. The only limit to the number of additional days available to the U.S. purse seine fleet are limits internally agreed by the PIPs on the number of fishing days they will make available—which might be informed to some degree by the decisions of the WCPFC—and competition for their purchase by other international purse seine fleets.

Ultimately, the spatial distribution of fishing effort (*i.e.*, with respect to the U.S. EEZ, the high seas, and the PIPs’ EEZs) will depend largely on the amount of effort that is available in each area each year. For each action alternative, NMFS would address the specifics of effort distribution within each alternative (Table 1) separately; and where necessary, NMFS would discuss the implications of variable effort distribution on impacts of that alternative to the human environment.

FAD Regulations

Fish aggregating devices, or FADs, are generally floating objects; they include natural objects as well as rafts deployed from purse seine vessels specifically to aggregate tuna. FADs

tend to attract marine life, including tunas, and can be an effective method to increase tuna catch per unit of fishing effort. Purse seine sets on FADs tend to result in higher catches of targeted skipjack tuna than unassociated sets, but also increase the catch of bigeye tuna—most of which is relatively young—and young yellowfin tuna, as well as other marine life. Recent FAD regulations have included: prohibitions on the times and/or locations that FADs can be deployed, serviced, or set on; limits on the annual number of FAD-directed purse seine sets; and a combination of both seasonal prohibitions and numerical limits. In addition, a recent Commission decision includes a limit of 350 FADs with activated instrumented buoys that each fishing vessel may have deployed at any given time (see 2018 Final Rule).

NMFS has implemented FAD-use prohibition periods for the U.S. purse seine fleet in the WCPFC Convention Area for 2009–2017 in line with Commission decisions. The prohibition periods were in August and September in 2009, July through September in 2010–2012, July through October in 2013 and 2014, and July through September in 2015–2017. There was also a complete prohibition on the use of FADs on the high seas for 2017. The 2018 Final Rule established FAD use prohibitions for a three-month period (July through September in 2018) and an additional FAD use prohibition period in high seas areas for two months (November and December 2018). In addition to FAD setting prohibitions, NMFS limited the total number of purse seine sets on FADs (“FAD sets”) to 2,522 per year in 2016 and 2017, in line with Commission decisions. The Commission did not establish FAD set limits for 2018.

Reasonably foreseeable future FAD measures for the fleet could include further FAD use prohibition periods and/or set limits as seen in recent years, as well as the potential for limitations for FAD design, restrictions for FAD construction materials and reductions in the number of FADs with activated instrumented buoys. Despite this broad range of potential FAD-

related management measures, NMFS suggests that the total number of FAD sets—measured as the proportion of total sets made—could approximate the implications of any proposed future FAD management measure.

NMFS recommends evaluating four levels of FAD restrictions, ranging from a full prohibition on FAD sets to a higher proportion of FAD sets than seen in recent years, across each of the fishing effort-based alternatives (Table 1). The proportion of total sets that would occur on FADs across this range would be equal to 0, 20, 40 and 60 percent of the total number of sets made. FAD restrictions leading to 40 percent of total sets on FADs would be similar to the FAD restrictions experienced by the fleet over the last five years (average 38 percent of sets on FADs, 2013 – 2017) when a range of FAD management measures were in place. The 20 percent and 60 percent FAD set proportions bound the range of FAD set proportions for the fleet over during the last decade (min 27 percent, max 54 percent, 2008 – 2017). The full prohibition level (0 percent FAD sets) ensures the complete range of potential FAD restrictions will be analyzed in the EIS.

These proposed action alternatives, related to controls on the type and amount of fishing, are meant to capture the full range of foreseeable future management measures in the fishery. By combining a wide range of fishing effort levels and FAD restrictions into these proposed action alternatives (Table 1), the impact analysis should be relevant to a wide range of future management measures related to effort or FAD restrictions. NMFS interprets these fishing effort and FAD restrictions as proxies for other types of management measures, meaning the application of the impact analysis can be wider still. For example, fishing effort levels would be directly applicable to management measures specifying skipjack tuna or yellowfin tuna catch limits as well as a range of time and area closures. FAD restrictions—measured as proportion of sets on FADS—are proxies for bigeye tuna and yellowfin tuna catch limits, FAD design or

material specification, and a range of FAD set closure times and/or locations. With this approach, nearly all foreseeable future management measures can be evaluated relative to the environmental impacts of these proposed action alternatives.

Table 1. The amount of fishing effort, in fishing days, and number of FAD sets under proposed action and no-action alternatives that control the type and amount of fishing to be analyzed in an environmental impact statement for the U.S. WCPO purse seine fishery.

Alternative	Fishing effort (fishing days)	Number of FAD sets
No Action A	0	n/a
<i>Action 1a</i>	5,000	0
<i>Action 1b</i>	5,000	1,000
<i>Action 1c</i>	5,000	2,000
<i>Action 1d</i>	5,000	3,000
No Action B	7,000	2,800
<i>Action 2a</i>	9,000	0
<i>Action 2b</i>	9,000	1,800
<i>Action 2c</i>	9,000	3,600
<i>Action 2d</i>	9,000	5,400
<i>Action 3a</i>	12,000	0
<i>Action 3b</i>	12,000	2,400
<i>Action 3c</i>	12,000	4,800
<i>Action 3d</i>	12,000	7,200

Control of Allocation and Use of Fishing Privileges

One of the most significant amendments to the Treaty in 2016 is the way that vessel owners obtain and pay for fishing privileges—fishing days—in the EEZs of the PIPs. As described previously, both upfront and additional days are available under the Treaty to U.S. purse seine vessels. The Treaty specifies requirements for the timing of notification of upfront fishing day commitments, transfers of upfront fishing days among vessel owners, and

notifications of additional fishing day arrangements. In the first two years under the amended Treaty (2017 and 2018), vessel owners have collaborated to allocate the available upfront days amongst themselves, conduct in-season transfers of those days, and communicate both information on upfront and additional day arrangements to NMFS. NMFS has provided owners with updates on day usage as well as helped informally resolve issues that arise over fishing days between U.S. vessels owners and PIPs, based on data available to NMFS.

NMFS is proposing to evaluate alternative approaches for allocation, transfers and use tracking of fishing privileges under the Treaty. These alternatives would address the following considerations: 1) timely provision of information to meet requirements and obligations of the United States under the Treaty, decisions of the Commission and other U.S. law; 2) addressing and resolving allocation disputes; 3) addressing vessels joining or leaving the fishery; 4) providing flexibility to fleet participants with respect to obtaining and using fishing days from PIPs; and 5) minimizing regulatory burden and cost.

NMFS is considering evaluation of three alternative allocation and use tracking approaches that would fulfill the requirements defined above. These approaches are action alternatives that would first be compared separately and then discussed relative to any differential impact they would have on the human environment when combined with the no-action and action alternatives in Table 1. Like the control of type and amount of fishing alternatives, these control of allocation and use alternatives are intended to bound the full range of possibilities for analysis; and proceed from the lowest to highest level of NMFS oversight. The three proposed alternatives are:

1. An industry-led allocation and use tracking method, where decisions related to allocation, transfers and tracking of available fishing privileges were made by an organization of fishery participants based on approaches they collectively specified;

2. A collaborative industry-NMFS approach where NMFS would facilitate industry decisions regarding allocation, transfer, and use through both regulatory and non-regulatory mechanisms; and

3. A specified allocation, transfer and use-tracking approach primarily under NMFS management and oversight.

Besides comments on these three proposed allocation and use alternatives, NMFS is specifically requesting comment on two additional aspects of these alternatives. The first concerns allocation and use of fishing privileges. Treaty and implementing agreements currently allow for assignment of vessel days at the U.S. vessel owner level. Tracking at the vessel owner level provides flexibility for those owners that have multiple vessels, but complicates the tracking of fishing day use as there are not vessel specific limits to monitor. NMFS seeks comment on the appropriate “level” for allocation and use tracking of fishing privileges in these proposed alternatives; be it the vessel, the vessel owner or some other level. Second, the numbers of U.S. EEZ and high seas fishing days available to the fleet in the WCPO have been limited since 2009 in accordance with decisions of the Commission. These limited fishing privileges have not previously been subject to allocation and are fished in an “Olympic” or “derby” style; meaning that they are available on a first-come, first-served basis to vessels that are permitted to fish in those areas. NMFS is also seeking comment on whether the proposed alternatives for control of allocation and use of fishing privileges should be extended from

considering only privileges under Treaty to include fishing privileges in the U.S. EEZ and on the high seas in the WCPO—to the extent it is limited under WCPFC or other decisions.

NMFS recognizes that consultation and collaboration with U.S. purse seine vessel owners and operators on the approaches for allocation of effort in this fishery is needed, and sees this notice of intent to develop an EIS as an initial step in this process. The public comment received through this notice of intent and analysis of alternatives for allocation and use of fishing privileges in this EIS will inform future NMFS-industry discussions.

Summary

Given the wide range of potential future management approaches in this fishery, NMFS is proposing action alternatives that span the broad range of management measures foreseeable under U.S. regulations to implement the Treaty, decisions of the Commission, and other U.S. law. In total, NMFS has tentatively identified two no-action alternatives, three action alternatives related to controls on the type and amount of fishing (Table 1), and three alternatives related to the allocation and use of fishing privileges. NMFS plans to analyze the environmental consequences of implementing each of the alternatives by assessing the direct, indirect, and cumulative effects of each to the human environment in the Western and Central Pacific Ocean.

By evaluating alternatives that span the full range of reasonably foreseeable future

management measures, the environmental impacts of future management actions not explicitly analyzed could be estimated relative to those calculated in this EIS.

Authority: 42 U.S.C. 4321 *et seq.*

Dated: August 20, 2018.

Margo B. Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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